In Wasses the Superior of Man ! There is no doubt that, according to the

Bible, man was the principal object of creation. and that woman was brought into being to serve as a supplement and ministrant. Is this also the conclusion to which the investigations and deductions of scientists fairly point It must be admitted that biologists, although they have saidom touched the question other wise than incidentally, assume or imply a cer tain inferiority in the physical, if not the mental capacities of women; but are not their data susceptible of a different construction To that question an affirmative answer is made in an extremely interesting book entitled The Woman, by ELIZA BURT GAMBLE (Putnam). The author tells us that, after a somewhat careful atudy of written history and after a prolonged investigation of the accessible facts relating to extant tribes representing the various stages of human development, she became convinced that the female organization is in no wise inferior to that of the male, Subsequently she undertook a systematic examination of the data collected by naturalists relative to the evolution of manking from lower orders of life. The result of this inquiry was the belief that the theory of evolution, as enunciated by authoritative expounders, furnishes much evidence to the ffect that the female among all gradations of life, man included, represents a higher stage of development than the male. The purpose of this volume is to show that the facts of ence and those of history harmonize; to set forth first the principal data brought for ward by naturalists bearing on the subject of the origin and development of the two lines of sexual demarcation, and then, by means of the facts observed by explorers among peoples in various stages of development, to trace the effect of such differentiation upon the individual and upon the subsequent growth of human society. We may not always agree with the author as to the significance of date but no candid reader will fail to recognize the comprehensiveness and good faith of her re searches or the earnestness and skill with which her conclusions are laid before us. We can indicate the scope, method, and value of this courageous, not to say audacious work by referring to certain chapters on the physical superiority of the female, on the supremac of women at a certain stage of prehistoric and on the extent to which the profited by the development of altruism through the Stole philosophy and Roman lay if indeed their induence on Roman society is the age of the Antonines was not rather cause than an-effect of altruistic tendencies.

The author undertakes to prove that the fe male represents a higher development that the male through all the various departments of animate nature. Thus, among plants, stam-inate flowers open before pistiliate, and are much more shundant and less differentiated from the leaves, showing that they are less developed, and that alighter effort a less expenditure of force, is necessary to form the male than the female. A male flower represents an intermediate stage between a leaf and a perfect or female flower, and the germ which produces the male would, in a higher stage, produce the female. The most perfec and vigorous specimens of coniferous trees are of the female kind. We are told, too, that in its highest and most luxurious stage, the larch bears only female blossoms, but that, so soon as its vigor Is lost, male flowers appear, after which death soon ensues. Among in sects, the males appear first, thus showing that less time is required to develop them from the larval state. In the case of bees, the queen, who represents the culmination the species, is produced only under the highest circumstances of nutrition while the birth of the drone or male, who represents the lowest result of propagation, is preceded by extremely low conditions. The working bee, which, being an imperfect female, cannot be impregnated, will, however, give birth to parthenogenetic offenring offspring always being male. In the case of aphides, the sex depends on the condiof nutrition. During the summer months, while food is plentiful and nutritions females are parthenogenetically produced, but with the return of autumn and the attendant scarcity of food, together with the low temperature, only males are brought forth. It is said to be a fact also that, if caterpillars are shut up and starved before entering the chrysalis stage, the butterflies which make their appearance are males, while the highly nour ished eaterpillars are sure to come out females. In the case of moths, inputritious food produces only males. Experiments show likewise that, when tadpoles are left to themthe average number of fifty-seven in the hundred, but that under favorable conditions the percentage of females is greatly increased. From a series of tests made by Yung, it appears that in the first brood, fed with beef, the percentage of females was raised from fifty-four to seventy-eight; in the second brood, fed with fish, the percentage rose to eighty-one, while in the third set, supplied with the nutritious flesh of frogs. only eight males were produced to ninety-two famales. From many similar observations collected by Düring, the deduction is made by Prof. Brooks that "among animals and plants. as well as in mankind, a favorable environment causes an excess of female births'and a unfavorable environment an excess of male births." There seems, indeed, to be no doubt that, among the human species, nutrition plays an appreciable part in determining sex. Statistics prove that, in towns and in well-todo families, there is a preponderance of girls. while in the country, and among the poor, more boys are born; also, that after epidem les, wars, and famines, there is an excess of male births. On examination it was found in Saxony that "the ratio of porbirths rose with

As a result of the excessive eagerness in males for propagation and the consequent expenditure of vital force among the lower orders of life to find the female and secure her favors, the males are generally smaller in size. with a higher body temperature and shorter life. Among the higher orders, the human species, for instance, although man is larger than woman, he is nevertheless shorter lived, has less endurance, is more predisposed to organic diseases, and more given to reversion to former types, facts which seem to indicate that his greater size is not the outcome higher development. The result of an extensive examination of male and female subjects was that about 55 per cent. of the males were possessed of muscles proper to the lower orders while in only about 17 per cent. of the females did this reversion appear. In a single male subject seven muscular variations proper to area were disclosed. Of Edward Lambert, the porcupine man, who lived in London during the last century, Hacke that the menstrous horny points out and thorn-shaped formation of his outer skin or epidermis was transmitted to his sons and grandsons, but not to his granddaughters. Ac cording to the testimony of those who have made a study of abnormalities in the human organization, the ears of men present a greater range of variations than do those of women. and the cases in which supernumerary digits appear in males are as two to one. As the lack a hairy coat for the holy constitutes one of the principal characteristics which distinguish man from the lower animals, a knowledge of the order of time in which the two sexes became divested of their natural covering should throw light on their relative stages of development. The well-knewn traveller, Miss Bird. in a description of the Aines of Yesso, who are heved to have been the original inhabitants of Japan, tells us that, while the men are covered all over with a thick coat of black hair. the women " are not heiry like the men, but have noft, brown skins." Upon this subject of hairiness Darwin says: We may conclude that it was our female semi-human ancestors who were first divested of hair, and that this corntred at an extremely remote period, before the several races had diverged from a common stock." After our female ancestors | band of another year went to him destitute

the price of food and fell with it."

had acquired the now character, nudity, they only transmitted it to their own sex, but, by continually salacting their mates from among the least hairy, the males also, in process of time, to become divested in a greater or loss degree of their hairy covering. It is further soled that sight is the most intellectual of the senses, yet in the development of the visual organs men are especially deficient. An examination made by Dr. Jeffries of the pupils of the Boston schools showed that about one male in every twenty-five was color blind while the same defect among the girls and young women was extremely rare, less than one-fliteenth of one per cent, being thus af lected. The result of a similar in suiry in the schools of St. Paul was that four per cent. of all male pupils were color blind, while only one-tenth of one per cent, of the female pupils suffered from the deficiency. Not only is man's sense of sight less perfect than woman's, but his sense of touch is less acute. The hand, guided as it is by the brain, is the most completely differentiated member of the human structure. The female hand, however, is care ble of delicate distinctions which the male has no means of determining. The experience o he Treasury Department at Washington that a counterfelt greenback may go through half the banks in the country without being detected, until it comes back, often torn and mutilated, into the hands of the female em ployees of the Treasury. Then it is certain o detection. They shut their eyes and feel of note, if they suspect it. If it feels wrong, it half a minute, they point out the incongruities of the counterfeit.

Among the data marshalled by the author we select finally the fact that in all "old-set notwithstanding the fact that more boys are born than girls. Regarding the excess of mal over female births. Darwin quotes from Prof Faye, who says: "A still greater preponder ance of males would be met with if death struck both sexes in equal proportion in the womb and during birth. But the fact is that for every one hundred still-born females we have in several countries from 134 to 144 stillborn males." During the first four or five years of life more male children die than female; for example, in England, during the first year, 126 boys die for every 100 girls In France the proportion is still more unfavorable to the males. The excess of females over males is the more noteworthy because, owing to the peculiar sexual conditions of woman's environment during the last five thousand years there has been developed within her sensitive organism an alarming degree of functions perrousness but the author of this book be lieves that the resultant diseases and physical disabilities are destined to disappear as soon as, through higher conditions, women become free to express their own will in matters per taining to the sexual relations.

In three successive chapters, the author examines the theories of Bachofen, of McLennan, and Sir John Lubbock regarding the early supremacy of women and wife capture. She reects all of their hypotheses, on the ground either that the premises are defective or false or that they do not justify the deductions drawn from them. With reference to the early type of social organization founded on the Mother-Right (Mutter-Recht), she accepts, for the most part, the views set forth by Morgan in his Ancient Society. That is to say, early society, under the primitive institution of the gens, sept or clan, was established on the basis of the relations of the individuals to the rest of the community, a community in which each member could trace her or his origin back to the head of the gens, who was a woman. The fact that, throughout the earliest period of hu man existence regarding which any knowledge is obtainable descent and all the rights of succession were traced through women, is pronounced, at the present time, so well es tablished as to require no detailed proofs to substantiate it. Some writers, indeed, have contended that it does not follow, from this usage, that the influence of women was supreme; but that their influence must have been considerable, if not preponderant, seems evident from the working of the laws of Under the archaic rule of the gens, at the death of a male, whether married or single, his possession descended to his sister's children; while at the death of a female her property, including her personal effects, was distributed among her slaters and her children and the children of her daughter But the children of her sons were not included among her heirs. The sons' children belonge to the gentes of their respective mothers, and as descent and all the relationships to which succession were attached were traced only in the female line, and, as property until the middle of the second status of barwhich it originated, children could receive nothing from their father, and must look to their mother for everything. In later times, when tribal honors were confined within cer tain families or groups, as descent and property right were all traced in the female line each male was dependent upon his female relations not only for his common inherited privileges in the gens, but for any civil or military distinction to which he might attain It was the gens, then, which carried mankind through successive stages of barbarism to the opening ages of civilization. At the head of the gens, controlling the principa means of subsistence and forming the line of descent and inheritance, women, until the close of the middle status of barbarism, seem to have been the leading spirits. How came they to lose the species of supremacy implied in the existence of Mother-Right? deposing power in their hands, and with the precautions taken by them against injustice or usurpation of rights on the part of male eachems and chiefs, it would seem that, unless some unusual eireumstances had come into play, they would have kept the predo ninance which they originally possessed. How they came to lose it the author of this book undertakes to explain in a chapter on the origin of marriage. It is pointed out that, previously to the decline of feminine influence women taken prisoners in war were not regarded as the property of their captors. On the contrary, female captives were adopted into the gens and invested with the same status personal independence as was enjoyed by the original female members of the group Later, however, female prisoners began to be regarded as the special booty of their captors and as belonging exclusively to them, but, thenceforth, they were not held to be entitled to any of the privileges of the community into which they were taken. From this epoch in the history of the race our author traces the decline of woman's power, and the subjection of the natural female impulses toward continence, modesty, and self-control. As, at this stage of barbarism, women within the limits of their own tribs held the balance of power in their own hands, and still exercised unqualitled control over their own persons, the ac knowledged ownership of one woman who, being a "stranger," was without power or in fuence, would be an object much to be desired by males, and one for which a warrior would

not heaitate to brave the dangers of a hostile

were sought after singly and in groups, and in

called wives became general, till under the

new regime, women had the fear of captivity

constantly before their eyes. Frof. Smith

quotes from the advice given by an Arab to

his son to show the motive for the proference

o have a wife who has no claims of kin and no

onditions of the human race, when marriage

monogamous union, exclusively con-

being the bearers and protectors of

trolled and terminable by the female, women

the young, were regarded as the natural land owners. Hence women did not leave

their own homes to follow the fathers of their

children, lest they should lose their own pos-

soman who left her own relations for a hus-

sessions and their rights of inheritance. A

of an extra-tribal marriage, says: "It is betto:

brethren near to take her part." Under earlie.

did not exist, but, instead of it

process of time, wars for female slaves or as

camp. Hence the women of hostile tribar

and disinherited, gave up her natural right to he soil, and, consequently, to independence. In short, according to the author, the facts connected with the origin of the institution of marriage demonstrate that women lost their nfluence and power not because of their sex. but because, through extra-gentile or extratribal marriages, they became foreigners and dependents in the homes of their husbands process of time women bound to foreign tribes by the children which had been born to hem while in the position of captive slaves began to accommodate themselves to the situ ation. But, in the opinion of our author, such accommodation meant degradation; the belle is expressed that "of all the forms of human slavery which have been devised there has probably never been one so degrading as is that which has been practised within the marital relation, nor one in which the exmatter of such utter hopelessness. In the primary status of a wife we behold woman an allen and a stranger in the hut of her master, with no rights which any one is bound to respect. Torn from friends and home, dependent, and suffering from the assaults of her worse than brutal owner, she wakes to find herself entombed in a lazar house more loath some and foul than the reeking cavern of s hundred lepers. She has, indeed, reached the lowest depth of physical prostration to which human being may descend; she has become the slave of the unrestrained appetites of her keeper." It seems clear enough that, as sexual slave, weakened by abuse, and terrified into obedience, woman would lose all chance of self-respect and independence; and from a self-sustaining, liberty-loving, free individual, would become a chattel, a menial, mere pensioner on the bounty of a tyrannical lord and master, who, although to her a de tested foreigner, had the power of life and death over her person. In process of time when vast hordes began wars of conquest and spollation, and when the men belonging to the invaded country were either taken prisoners or slaves, the women being util longer as wives, there was no any security except in strength of arms women had the fear of captivity incessantly before them. The author emcludes a chapter on this subject with the following paragraph Thus, through the capture of women for wives, and the subsequent control of property by males, the ancient plan of government founded on female supremacy was over thrown and those attraistic principles which are the legitimate outgrowth of the free ma ternal instinct, and which for thousands upor thousands of years had guided the race upon its onward course, finally succumbed to a system based on the dominion of sexual passion and physical force. When we remember the conditions surrounding early society we may well believe that civilization was gained not because of the fact that male power succeed ed in gaining the ascendancy over female in-fluence, but in spite of it. Given a combination of circumstances involving the supremac; of the lower instincts in mankind, and the in dividual ownership of land, the subjection o women, monarchy, and slavery, with all their attendant evils, namely, overpopulation, dis

ease, crime, and misery were sure to follow." Regarding the legal status of women in the age of the Antonine Casars, our author quotes from Sir Henry Sumner Maine the observation that, "led by their theory of natural law, th jurisconsults had, at this time, assumed the equality of the sexes as a principle of their code of equity." The changes wrought at that period in the legal status of women may be summed up in the statement that, whereas, under the older Roman law, a woman at marriage came under the patria potestas of has husband, under the latter law, as influenced by the principles of the Stoic philosophy and expounded by such jurists as Galus, she remained a member of her own family, or was placed under the protection of a guardian appointed by her parents, whose jurisdiction over her, although superior to that of her husband, was not such as to interfere with her personal liberty. The result was that, at this period in Rome, as under the primitive matriarchal regime, the situation of woman, whother married or single, was one of great dignity and influence. Touching, however, freedom enjoyed by women after the time of the Antonine Cresars, Maine points that "Christianity tended somewhat from the very first to narrow this remarkable liberty. The latest Roman law, so far as it is touched by the constitutions of the Christian emperors, bears marks of a reaction against the liberal doctrines of the great Antonine jurisconsults. The prevalent state of religious sentiment may explain why it is that modern jurisprudence, forged in the furnace of barbarian conquest and formed by the fusion of sorbed among its rudiments many of the ideas concerning the position of women which belong to an imperfect civilization." Lecky too. comparing the Roman jurisprudence with the canon or ecclesiastical law, remarks that "the Pagan laws during the earlier centuries of the empire were constantly repealing the old disabilities of women, whereas it was the aim of the canon law to substitute enactments which should impose upon the female sex the most offensive personal restrictions and stringen aubordination.'

Judge Dillon on Luziish and American Ju

risprudence. Some interesting legal questions are discussed by Judge John F. Dillon in a series of loctures delivered at Yale University two years ago, and now republished, with the addition of notes, by Little, Brown & Co. The lectures deal with the subjects of legal education, of trial by jury, of the origin, development, and characteristics of the common law of written constitutions, legislation, case law the law reports, the doctrine of judicial codification, and law form. The general purpose which runs through the book is to exhibit the excellences of our legal system, with a view to show that, for the peoples subject to its rule, it is, with all its faults. better than the Roman or any other alien scheme. In other words, the book, viewed colectively, is an earnest and cogent protest against the Continentalization of our law. As the lectures were originally addressed, not to members of the profession, but to law students the treatment of the subjects examined is popular rather than technical, and a success ful effort has been made to invest them with appropriate literary and historical illustra-We shall try to give some idea of the method and substantial value of this work, by marking what the author has to say about trial by jury, case law, the law reports, the toetrine of judicial precedent, and codification. Before leaving the introduction, however for the body of the book, we would direct attention to a paragraph in which Judge Billor outlines his objections to the proposals which have been made to recast our jurisprudence upon the model of the Roman civil law, or pon some of the Continental systems which have been framed upon that pattern. Such an endeavor the author holds to be a radical mis "Our laws," he says, "and jurisprudence must be analyzed and resolved into their constituent principles, and these must be arranged according to their own nature and historical developments. The resulting arrangement will necessarily be as unique and distinctive as the materials with which it deals, which cannot be recast, except to a limited extent, in moulds furnished by the civil or Continental law. A Roman basil ica cannot be transformed into a Gothic cathedrai. We cannot sever ourselves from our past in respect of our law, any more than in respect of our history. We can no more change the essential character of our legal system and legal institutions than we can change our language or the traditions, babits, usages, prejudices, and genius of our people. Such a hange would be impossible if attempted and unwise if it were possible. The English and Roman arstems are so different in their conception, growth, essential character and scope

and signal failure any attempt to remodel ours as a whole after the Roman system, or any of its modern European adaptations."

Judge Dillon is not one of those lawyers who, privately or openly, ridicule and denounce our system of trial by jury. He, on the contrary, considers the trial by jury an essential part of our judicial system. In his view, "It is more than a cherished tradition; its roots strike down deep into the experience, the life, and nature of the people who have developed and perpetuated it. It gives an individuality to our legal system. It is a vital part of it. Its shortcomings are not inherent. If Judges will do their full duty jurous will de theirs. have tried, literally, thousands of cases with jurors, and the instances are few had reason to be dissatisfied with helr verdicts." On another page we read: In criminal cases there is no substitute for the jury that would be acceptable to the profession, or endured by the people. In the solemn act of passing upon the guilt of those charged with offences against the public, the jury represent the majesty of the people as a whole; and, when acting under the guidance of a canable Judge their verillets are almost always right. In the occasional cases where the offender has been almost more sinned ngainst than sinning, but which cannot be anticipated or excepted from the criminal de, and where the offenders are consequent ly technically guilty, and a Judge would fee sound so to decide, the jury administer as Irregular equity, not eapable of being defined and formulated, nor of a nature to be expressly sanctioned by the lawgiver, but which satisfies the judgment and conscience of the community, without overturning the criminal statute, which still stands intact. In connection with this subject Judge Dilon cites the weighty testimony of the late Mr. Justice Miller of the United States Suprem-Court, whose opinions regarding the jury aystem underwent a change in the course of his life. He said, it seems, at one time to the auone composed of three Judges, to try all civil

ther, that his notion of an ideal trial court wasaues of law or fact. Not long before his death, however, he wrote a paper which expressed his deliberate and final appreciation of the worth of trial by jury. "I must confess," he says in this paper, "that my practice in the courts, before I came to the bench had left upon my mind the impression that, as regards contests in the courts in civil cases, the jury system was one of doubtful utility; and if had then been called upon as a legislator to provide for a system of trial in that class of actions, I should have preferred a court constituted of three or more Judges, so select ed from different parts of the district or circuit in which they presided as to prevent, so far as possible, any preconcerted action agreement of interest or opinion, to decide all questions of law and fact in the case rather than the present jury system." After defining the principles which in his judgmen ought to govern the relations of a Judge to jury, Justice Miller goes on to say: ' perience of twenty-five years on the bench. and an observation during that time of cases which come from all the courts of the United States to the Supreme Court for review, as well as of cases tried before me at nisi prius, have satisfied me that, when the principles above stated are faithfully applied by the court in a jury trial, and the jury is a fair one, then, as e method of ascertaining the truth in regard to disputed questions of fact, a jury is in the main as valuable as an equal number Judges would be, or any less number. And I must say that in my experience, in the confer ence room of the Supreme Court of the United States, which consists of nine Judges, I been surprised to find how readily those Judges come to an agreement upon question of law, and how often they disagree in regard to questions of fact which apparently are as clear as the law. I have noticed this so often that I am willing to give the benefit of my observation on this subject to the public, that Judges are not preeminently fitted over other men o good judgment in business affairs to decide upon mere questions of disputed fact."

It is, of course, acknowledged by Judge Dil

on that civil controversies are much more

complicated than criminal trials, and that the

verdicts of juries in civil cases are much less

satisfactory. He attributes this shortcoming

causes: first, juries, though they always ought o be, too frequently are not composed of the better class of citizens in respect of intelligence, moral character, and business experience: secondly, Judges have been deprived in many of the States of some of the powers necessary to secure a true verdict, and not only there, but elsewhere, they fail to use the power of correcting the mistakes of juries by an adequate exercise of the States-by way of example, the author cites Missouri, Wisconsin, Illinois, Iowa, Arkansas, Mississippi, and North Carolinastatutes have been passed which degrade the Judge from being the presiding and guiding intelligence at the trial into an officer whos functions rather resemble those of a mere Moderator. For instance. "he is forbidden to charge upon the facts forbidden to sum up the case upon the evidence, forbidden to express any opinion upon the value of the testi mony, and is expressly required to confine his charge or instructions to a barren and to the jury often unintelligible, statement of the law of the case:" sometimes, moreover, he is com pelled by statute to give or refuse instructions in the precise form in which they are framed by counsel. The author of these lectures repeats that, if the Judges are permitted to their full duty and will do it, the jurors will do theirs. "If we are to expect satisfactory ver dicts, the presiding Judge must, in his charge make the way of the jury plain and clear, and he must have the legal power as well as the ability to do this." The legislation above referred to being intended to circumscribe or cripple a Judge's spowers, implies a distrus either of the capacity or of the integrity of Judges, and overlooks the need on the part o the jury for intelligent judicial instruction and For the shortcomings of the jury system Judge Dillon would seek a remedy not in the line of these statutes, which are based on the assumed continuance of their cause, but by a removal of the cause, through securing Judges competent to the full discharge of the high and delicate duties of their office. To cripple the Judge increased rather than diminishes the evils complained of. Under the practice required by the statutes of those States which have narrowed the powers of Judges in jury trials, mistaken verdiets are greatly multiplied. At the same time, as an indirect although unintended conse quence of restrictivo legislation, Judges have been led to pay too much respect to erroneous and ecceptric verdicts. The author tells us that he has known Judges to boast that the have never exercised their power to set verdicts aside, although the exercise of this right

is sometimes indispensable to prevent a miscarriage of justice. It is further pointed out that the danger of such a miscarriage is enhanced by the preva lence in certain States of the false principle of the scintilla doctrine, which amounts to this that, if there is a soutilla of evidence, the case must go to the jury. The true doctrine is here declared to be that approved, after some fluetuation, by the Supreme Court of the United States namely, that no case ought to be submitted to a jury, where the evidence in favo of the party who asks for the submission is so weak that a verdict in his favor ought to be set aside by the Court. The injustice often produced by the sc illa doctrine and by the refusal of the court to interfere with verdicts, is of course, made final by the refusal of the appellate court, except in cases of the most flegrant wrong, to overrule the discretion of the trial court refusing a new trial. The sum of Judge Dilion's remarks upon this topic is that " if the courts will clearly in struct juries, and will exercise when they ought to do so, the power to set aside verdicts and grant new trials, there will be fewer complaints about trial by jury, and less agitation

be rendered by a less number: than the whole of the jury"-a change which the author be-lieves to be based upon no necessity, and in the highest degree unwise.

One of these lectures is allotted to a consider ation of the vast volume and rapid accumulation of case law, viewed specially with refer ence to the practicability of limiting its growth by legislative action restricting the p tion of the reports of adjudged cases. The true office and use of adjudged cases are set forth in a letter to the author from the late Mr. Justice Miller, which is reprinted in the book be fore us. Justice Miller begins by pointing out that the relative usefulness of authorities, and especially of judicial decisions, in enabling a Judge to make up his own judgment in cases before him, is often a question productive of no little anxiety, and the answer must largely depend upon the kind of cases in which the authorities are presented for his examination. There is, for instance. large class of cases, perhaps the largest, which must be decided on principles that are not disputed, that is to say, "the propositions advanced by the counsel on opposing sides ar such as will be generally conceded and need no support from judicial decisions. In these cases which in my experience are the most numerous, the task of the Judge is to deter mine from the case before him-that is from the pleadings and the evidence-whether i falls within the principles offered by those offered by the defendant, or within some modification of these principles which counsel of neither party has adopted. The decision of this question demands the mosstrenuous exercise of the reasoning faculties of a mind well stored with those general rules of law which lie at its foundation as a science. and the aid given in such cases by the decis ions of other courts does not amount to much The scientific arrangement of the facts of the case, as seen in the pleadings and evidence by a well-trained judicial mind, must, in this class of cases, be always the main reliance for a sound administration of the law." In an other class of cases, the decision of which turns upon a construction of constitutions and statutes, Justice Milier holds that the decislons of the highest courts of the Government which adopted the Constitution or enseted the statutes should be, for the most part, conclusive. Thus, "in the construction of the Constition of the United States or of an act of Congress, the decisions of the Supreme Court of the United States ought until reversed by that court, to be followed almost without question. That court has given expression to the rule in regard to the construction of the State Constitution and statutes by the highest courts of the States enacting them, in the adoption of the principle that, even in the case of coordinate and concurrent juridiction, it will follow those courts in the construction of the statute and Constitutions of their respective States. There is, however, a third class of cases which arise under the general rules of the common law, or in equity, and with regard to which the abstract reasons for one rule for another opposed to it are near ly balanced. Here Justice Miller deems it re important that some rule should be es tablished and followed with uniformity, than that one or the other rule should prevail in given case. It follows that, in this class of cases, where there are differences between the authorities adduced, the question should be determined by the weight of authority. is." he says. " in this class of questions that adjudged cases are most useful, and in which the examination and comparison of them by counsel are of great aid to the court, and are likely to reward the labor of those who make the examinations possible. Perhaps to this class should be added those in which the decision of the courts have become rules of property governing rights of parties to real or personal property." Judge Miller in his letter also says a word about the relative weight to be given to the different courts whose decisions are relied upon in the briefs of counsel. Leaving aside the decisions of the English courts and ques-

tions arising under State statutes, heavers, as might have been expected, that the value of a decision is to be estimated according to the character of the court, or of the Judge who de livered the opinion or both. It is pointed out that these factors in an estimate of value vary greatly in the courts of the United States. Without being invidious, or undertaking to name other courts of high standing, there are many things in the history and character of the Supreme Judicial Court of Massachusetts which entitle its reported decisions for the last hundred years to great consideration. But a decision often has a marit apart from the standing of the court in which it is made, owing to the high character Judge who delivered the opinion. Opinions delivered by such Judges as Marshall, Taney, Kent, and Shaw have a value apart from the courts in which they were delivered. Even the dissenting opinions of these men and their obiter dieta have worth in the minds of lawyers who have a just estimate of their character which they cannot attribute to many courts of last resort of acknowledged ability." But, after all, the final admission is made that the convincing power of the opinion or decision in upon the force of the reasoning by which it is supported, and of this every lawyer and every court must of necessity be judge.

As regards the already colossal and rapidly expanding bulk of case law, it is pointed out in

these lectures that, at the present rate of pro-

gression, the English and American reports

will in twenty years number 10,000 volumes. and in fifty years 20,000. No one disputes that there are many and indispensable attrioutes of value in this stupendous body of judiciary law. but against these must be set off inconvenlences and defects of such a character that they have at length become serious mischiefs if not positive evils. Thousands of useless cases-that is cases turning on special facts and those of no general interest, as well as cases which are mere repetitions and which add nothing to the law-have been and are constantly reported. Multitudes of print ed decisions have been questioned, limited, and overruled. The reports abound in case which are conflicting. The simplest heads of the law are overlaid with a mountainous mass of decisions which grows day by day. To an examination, study and comparison of this vast corpus of case law, with only such aids as digests and text books can give, is the legal inquirer remitted in his tollsome search for the existing law in cases which are not pro-vided for by a statute. After reciting the methods of remedying these mischiefs proposed by Benthum and Lord Westbury, the au ther of this book considers, on his own part, how far it is desirable that judicial opinions should be reported. In his judgment the theoretical answer to this inquiry is plain enough; namely, that only such cases ought to be reported as are useful redents, or constitute new developments of the law, or overrule or limit former decisions or newly construe legislative enactments. But the difficult practical question is not over ooked, to wit: Who is to judge of this? It will hardly do to leave discrimination to the reporter, and it is useless to leave it to him if he has a pecuniary interest in the multiplication of his reports. It is pronounced almost equally useless to leave it to the Judges, since a Judge who has laboriously examined acause and written a careful opinion therein will very naturally conclude that it is worth reporting. The result is that the majority of the opinions of the courts of last resort will continue to be reported, however desirable it that cases which wholly turn upon the facts and cases of more iteration and repetition should not be included in the official reports. Another question exam ned by Judge Dillon is whether it is advisable that the publication of the reports of courts aferior to the courts of last resort should be discontinued. There is a difference of opinion on this point, many lawrers holding that such

elsions, really embarrass rather than aid in the minds us that Judges will not, as a rule, write consequently, he deems it inexpedient to adopt polley which would discourage or prevent the deliberate study of cases which written opinions tend to promote and secure. He sees, too, that it would be impracticable to avert their publication in some form, either official or unofficial. Written opinions, when filed belong to the public records, and it would be against first principles to prohibit their publiation by statute, while, without such prohibition, they would find reporters and publishers so long as there should be a demand sufficient to reward the labor and expense of publication. Neither does Judge Dillon cor cur in the suggestion that dissenting opinions should not be published, although the multiplication of case law might thus be kept within narrower limits. Who is authorized, he aske, to assume that the majority of a given bench is always right? Not infroquently dis senting opinions are the sounder. If a dissenting opinion is written it is a fact in the case, and its suppression simply cause it expresses dissent can be defended on no ground, either of ple or of public policy. The conclusion is that, so far as legislative restrictions are concerned, the publication of reports of adjudged cases will probably go on, incessantly adding to the bulk and, to some extent, to the uncertainty of the law, until the effect becomes at last insup portable. Judge Dillon believes, however, that remedy will then be found, for the reason that the interests of justice are not doomed to be crushed by the very machinery which has been devised only to the end that justice may be furthered. Whether that remedy will consist in the breaking down or modification of the doctrine of judicial precedent or in some form of codification he does not venture to predict. He is himself inclined to think that a systematic, critical, and thorough discussion of the English doctrine of judicial precedent is a desideratum in our legal literature. It is pointed out that, in European States, judicial decisions have generally no binding effect as precedents and hence judicial reports are there relatively few, and it is submitted as a question, which should at least excite inquiry, whether, in the present comparatively matured state law, the doctrine of indicial precedent in the scope and rigor given to it in English and American jurisprudence is now really a better doctring than the modified one which prevails in the continental system, where, although the opinions and judgments of the highest tribunals exercise influence, they are not, as a rule, invested with binding force. The author quotes with approval some remarks of Prof. Baldwin of Yale University on this head. I cannot but think," the latter says, "that an undue prominence has been given to judicial precedents, as a natural source or enunciation of the law. The guiding principles of our law are few and plain. Their application to the matter we may have in hand it is the business of our profession to make, and if we spen more time in doing it ourselves and less in en

deavoring to find how other men have done it

we should, I believe, be better prepared to in-

form the court and serve our clients."

The subject of codification is one of peculiar interest to the lawyers of New York, where the enactment of a civil code has been strenuously advocated by Mr. David Dudley Field and resisted with equal vigor, and thus far with success, by Mr. James C. Carter. The nearest approach to a sanction of the project made by the American Bar Association was the resolution adopted in 1886, by a small majority, to the effect that 'the law itself should be reduced, so far as its substantive principles are settled, to the form of a statute." The conclusions which experience and reflection have led Judge Dillon to form are indicated on pages 256-260 of the book before us. He begins by insisting on a definition of terms. "The word code." he says. "is one to which such various meanings are attached that it seems to me to be essential either to drop it from the discus sion or, first of all, to fix what is meant by it If it means a general abrogation of existing laws and rules, and the substitution of an en tirely new system, and, to that end, the rele gation of the law reports to oblivion, it will have but very few advocates, and I am no among them. Such however, is not its neces. sary meaning." The author goes on to explain that according to his conception code differs from a mere revision, consolida tion, or digest of existing statutes, since it is essential to any practical or de sirable scheme of codification, whether it be general or confined to a particular branch that it shall derive the elements of its chief value from the existing body of case law, as well as statute law, removing therefrom what is obsolete, needlessly technical, inconsistent or superfluous, settling obscure and doubtful points, expressing wellsettled principles of general interest or utility, and with a cautious hand filling up the interstices which the irregular developmen of law, as a result of the exigencies of litigation, has left, and then arranging the whole in a definite and avatematic form." Judge Dillon believes that codification within these restrictions and conservative limits is expedient whenever it can be well and thoroughly done, and not before. Neither would he de mand in those charged with the work qualifieations so high that they are unattainable. Or the other hand, the author does not share the views of those who insist on a co dition precedent to undertaking any part of the work that the whole body of the ought thus to be subjected to the operation at one and the same time. To him it seems that the labor required is so vast, and the difficulties to be overcome are so great, that unless the work is done in divisions or branches of the law it will probably never be undertaken at all. As regards the practicability of codification by sections the fact is noted that some modern English statutes are so comprehen sive as very nearly to attain the purpose of a code touching the subjects dealt with. example, in 1882 an act was passed to codify the law relating to bills of exchange, checks. and promissory notes, and the author of the act has stated that he examined thousands of cases, as well as many statutes, in order to frame the desired law. Why, it is asked, might we not have a contract act, or a partnership whole corpus of our substantive law? Judge Dillon concurs with Mr. James

act, without waiting for a codification of the Carter in cautioning the profession against forming unreasonable expectations of the benefits to be derived from codification, no matter how well it may be performed. It is not possible, and, therefore, not desirable to make any enactment so comprehensive as to embrace all cases or combina tions of fact which will arise, nor is it possible to make statutes so clear and precise as to avoid the necessity of judicial interpretation and construction. The destrine of judicial precedent, although, in the author's opinion it might, with advantage, be subjected limitations, has, he notes, eventually affected every system of juris prudence, even where a determined attempt has been made to exclude it. islation, and, under it judicial decisions do not constitute an authoritative rule for other Judges, in the sense of our dectrine of judicial precedent. The same thing is true. at least in theory, of other Continental codes. The Prussian and Austrian codes, for instance. went so far, at first, as to forbid a Judge from referring to the opinion of a law writer, or to previous judicial decisions, and the Prussian code expressly directed him to base his judgments upon the statutes and the general principles of the Landrecht. But this rule has since been motified in both countries, so that, at this time, the decisions of the Supreme Court are regularly publishand they may consequently be asaumed to exercise a powerful, if not decisive influence upon inferior Judges, although they are not absolutely binding precedents. The gist of the author's discussion of this aubject is embodied in the sentence that "the law as, in my judgment, to predestinate to certain | for a shange in the law whereby verdicts may | reports, containing many ill considered de- | itself should be reduced, so far as practicable,

to the form of a statute," not with the expectation that the work of judicial interpretation will be no longer necessary, but with a view to reduce the necessity of interpretation and of judicial legislation to the narrowest practicaof limits, and to remove, as far as may be, the existing uncertainty in the law.

Since the time of Jeremy Bentham, it has been the fashion in certain quarters to speed at Sir William Blackstone, and it has even been asserted that it would be well for the serious student never to look into the famous Commentaries. This is not, by any means, the view commended by these lectures to the law students of Vale University. Judge Dillon draws a distinction which the assailants of Blackstone overlook, and cautions us not to regard the Commentaries from a wrong point of view. We are reminded that Blackstone was a teacher whose purpose it was to set forth the English law as it then existed, and not a reformer whose purpose was, to point out its deects with a view to its improvement. It is almitted that the two functions are not incompatible, but, although it might be expedient, it is not necessary in an institutional work rhose design is to state the law as it is, that the author should expose and emphasize the imperfections of the system which he is expounding. It is acknowledged that Blackstone did not possess the critical faculty which was so highly developed in Bentham and that, consequently, he was strongly inclied to view the laws of England with the eye of an idolater, and thus rarely saw anything but perfection and beauty in the object his worship. At the same time, it is contended that Blackstone's generalizations are clear and concise, that his historical researches are minute and, in general, remarkably accurate and that his book unlike many modern works. is no mere digest and arrangement of cases, but a systematic treatise. Touching the point of accuracy the author quotes Mr. Digby, who, in his History of the Law of Real Property, says that stope still remains unrivalled as an expositor of the law of his day. It will be seen," he adds, "that I throughout refer to Blackstone as the great authority of the earlier law, without going back to the original sources. Another weighty opinion cited is that of Sir Frederick Pollock to the following effects Blackstone's work was an excellent one in his time and according to his lights; we might honor him better at this day than by a blundering lip service, which, as a rule, offectually excludes the knowledge of what Blackatone really wrote. The modern editions spoil Blackstone as literature, without producing a good account of the modern law. One consequence of this is that the historical value of Blackstone in his genuine form is apt to be sadly underrated." Judge Dillon takes leave of Blackstone by urging every hwyer to make a point of reading the Commen taries in their original edition once every year In a chapter entitled "A Century's Progress." Judge Dillon points out that in the United States "we have established the security of titles to lands by a public registry system which, in effect, compels the registration of every instrument which concerns real property." One regrets that, in connection with this subject, he did not refer to the far greater security of titles and facility of transfers attained in the Australian colonies under the operation of the system of registration and insurance em-

bodied in the so-called Torrens act, a system about whose principles and workings too little is known in the United States. The effect of the system is to completely assimilate real estate to personal property as regards the ease and quickness and certainty of effecting sales or loans and conveying titles Wherever the Torrens act is in operation, one can sell or mortgage a piece of real estate as easily and rapidly as one can negotiate a promissory note. This is because all titles to real property are not only registered but insured by the State, and therefore the necessity of a lawyer's services is extinguished The fee for recording a sale or mortgage varies slightly in the different colonies, but it is everywhere insignificant, being reckoned. as a rule, in penules. A systematic exposition of the origin, history, and actual consequences of the Torrens act might well figure in the list of lectures at every progressive law sche

THE LOCK TUMBLED TO HIS TOUCH. J. M. Hill, the Manager, Wins a Bet by Opening a Safe in Five Minutes.

Phil Milligan, a well-known liquor dealer, has ordered a brand-new double-deck burgian and fire proof safe, with three sets of double bolts on it, for his saloon on Broadway near Thirty-second street, and thereby hangs a tale. To look at the big safe which is now and has or two years past been doing duty in Milligan' place one would never suppose that a new one was needed. But one is needed, and needed badly at that. The truth of the matter is that one has been needed for some months past, but Milligan never knew it until in a reckless moment he boasted about his safe to J. M. Hill of the Standard Theatre.

The safe in Milligan's place stands right oposite the cigar-stand and only a few feet from the Broadway door. For months Milligan has had a board lying on it, and on the board the free lunch has reposed.

There were a number of sporting men and theatrical men in Milligan's place one night last week, when J. M. Hill and Joe Hopper of 'The Fencing Master" company walked in Hill immediately began to guy Milligan about

his lunch 'It's a wonder," he said, "that you wouldn't get a table for that lunch. The idea of using a safe as a table. I never heard of such a thing n my life. I don't believe there's anything in the old affair worth taking any more than there's anything on it worth eating."

"Oh, you den't, ch?" said Milligan, a little bit roiled. "Well, there's more in it than there is in that tin bread box you keep up in the box office of the Standard Theatre."
"Tin bread box, eh?" said Hill. "Well, tin

bread box or not, no one but J. M. Hill can open it, and you can't say as much for that papier maché affair there." Do you mean to say you can open that safe

of mine?" asked Milligan. No question about it, my boy. I can open it in five m inutes." said Hill.

You're raving. Hill, you re crarr." sald Milligan excitedly. " Don't you know that's a modern safe, and no one but myself knows the

Milligan excitedir. Don't you know that's a modern safe, and no one but myself knows the combination? Great heavens, i'd bet any man on earth, unless he was the company's expert, a thousand soliars that he couldn't open it."

I won't bet you a thousand, said Hill, but, use to make it interesting. Fil het you a hundred and wine for everyhody that I can open that sale in five minutes."

I ou can't do it you can't do it in an hour," almost veiled Milligan. "Roys, drink your wing now. I we as good as won that bet. Why, Hill, that's a latest pattern of lock, and it's simply impossible for any one without a knowledge of the combination to open it. Come. I'll give you a chance to get out of that bird by paying for the wine.

Bird, ch' said Hill. "I'll show you whether it's a bird or not. The bet goes, desen't it?"

"Well, time me," cried Hill, and throwing off his coat and hat, he got down on his knees on the floor and began working at the lock. For three minutes he worked, first turning the knob one way and then the other. The crowd stood around and watched. Four minutes passed away and then the other. The crowd stood around and watched. Four minutes a Frojan. Four minutes and a hair passed and Milligan was smilling a broad smile, when there was suddenly a sharp click. Hill sprang to his feet and with a yank pulled the door of the safe open.

What did I tell you?" he cried triumphantix. what did I tell you?" he cried triumphantiz, Well, I'm diaged, Hill. How did you do it?"

What did I tell you?" he cried trium phantly.

Weil. I'm dinged, Hill. How did you do it?"
said Milligan.

I know a thing about safes," said Hill.
Fridently," put in Hopper, and then all hands stepped to the bur and for the next hour drank bothing but wins. Milligan rolld the bet with a crisp \$100 bill. remarking as he did so. Hill it's worth a bondred to know that you know the combination of my safe. I'll get a new one and bet you a thousand you can't onen it in a quarter of an hour.

(like me an hour to study it in and I'll take that bet," said Hill.

The sporting men are now all anxiously awaiting the arrival of Mr. Milligan's new safe, Hill saws he is going to make Milligan live up to his offer, and an exciting time is expected.

Hill a knowledge of locks was a revelation to his friends, but when they ask him about it he simply smiles and says.

aimpir amiles and says:

A wise man hever tells all he knows."